

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
Promotion of Competitive Networks )  
in Local Telecommunications Markets )  
)  
Wireless Communications Association )  
International, Inc. Petition for Rulemaking to )  
Amend Section 1.4000 of the Commission's )  
Rules to Preempt Restrictions on Subscriber )  
Premises Reception or Transmission Antennas )  
Designed to Provide Fixed Wireless Services )  
Cellular Telecommunications Industry )  
Association Petition for Rule Making and )  
Amendment of the Commission's Rules )  
to Preempt State and Local Imposition of )  
Discriminatory and/or Excessive Taxes )  
and Assessments )  
)  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

WT Docket No. 99-217

RECEIVED  
DEC 13 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-98

**FURTHER COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> respectfully  
submits these reply comments in connection with the Notice of Inquiry ("NOI") issued  
by the Commission in the above-captioned proceeding.<sup>2</sup>

<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As an FCC appointed frequency coordinator for the Industrial/Business Pool frequencies below 512 MHz, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and

The record developed in this proceeding clearly indicates that the Commission is correct in its concern over the increasing incidence of direct and indirect taxes and fees that target wireless telecommunications carriers. The telecommunications industry – and particularly the wireless sector – are subject to taxes and fees far and above those imposed on main street businesses. The studies submitted in response to the Commission's NOI confirm the findings of PCIA's own White Paper that the wireless and telecommunications industries are consistently singled out as "cash cows" by state and local governments.

While the wireless industry is experiencing extraordinary growth, this is only a recent trend. Consumers have moved to wireless alternatives as wireless prices have fallen and the industry is extremely sensitive to price increases. New wireless consumers faced with cascading taxes and fees will inevitably forgo new, advanced services or curtail their use of core services. Wireless carriers, many of who are still in the midst of building out their infrastructures or upgrading their networks, will necessarily divert investment funds to cover taxes and fees.

Government-imposed fees will have a detrimental impact beyond just the wireless sector of the telecommunications industry. As GTE notes, continuing high taxes applied to telecommunications will exacerbate the digital divide by increasing the cost of broadband services. It cites a report by the Progress and Freedom Foundation

---

conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

<sup>2</sup> PCIA previously responded to questions posed by the Commission in the Notice of Proposed Rulemaking portion of this proceeding. See PCIA Comments of August 27, 1999; Reply Comments of September 27, 1999.

that estimates that telecommunications taxes will result in between 1.2 and 4.2 million households not having broadband Internet access by 2002.<sup>3</sup>

The evidence of such extraordinary state and local governmental fees directed at the wireless industries is particularly troubling in two respects. First, wireless operators provide significant public benefits with little or no use of public rights-of-way or continuing local governmental oversight. Rather than seeking "tax favoritism," as one commenter suggests, the wireless industry merely seeks tax equity with the main street businesses that receive far more governmental benefits. Second, because wireless operators provide communications over scores of states, counties, towns, cities and townships, they are subjected to literally hundreds more taxes than the typical business. More than the absolute level of any one tax or fee, the cumulative impact of scores and scores of charges saddles these businesses with accounting conundrums and threatens the vitality of this industry.

PCIA again notes that any of these taxes, charges and other obligations may seem inconsequential, but taken together these charges – on top of a carriers' standard tax and fee obligations – threaten the industry's ability to meet the public's advanced telecommunications needs.<sup>4</sup> The Commission is in the best position to monitor the extent and impact of these scores of taxes and fees. Where these charges are targeted against new wireless competitors, the Commission should not hesitate to exercise its preemption authority under Sections 332 and 253 of the Communications

---

<sup>3</sup> Comments of GTE Service Corporation at 15-16.

<sup>4</sup> Letter of November 12, 1998, from Mary McDermott, Chief of Staff and Senior Vice President, Government Relations, PCIA to John Berresford, Industry Analysis Division, Common Carrier Bureau in CC Docket No. 98-146. ("McDermott Letter").

Act. At a minimum, the Commission should alert Congress as to the disproportionate incidence of taxes and fees imposed on the wireless industry and the consequences for the growth of basic services and the introduction of new ones.

**I. THE RECORD INDICATES THAT THE TELECOMMUNICATIONS INDUSTRY IS SUBJECTED TO A SIGNIFICANTLY HIGHER INCIDENCE OF TAXATION**

The initial comments confirm PCIA's findings that the incidence of taxes and fees imposed on the wireless industry far exceed those of other main street businesses. Telecommunications providers are subjected to a plethora of charges characterized as right-of-way fees, franchise taxes, use charges and access fees. The increasing incidence of these charges, which are in addition to general sales and income taxes, discriminate against the telecommunications industry and the wireless sector.

The National League of Cities et. al. ("NLC") claims that the telecommunications industry seeks tax favoritism.<sup>5</sup> On the contrary, the telecommunications industry and the wireless sector merely want to avoid being the tax collector's favorite target. The NLC also suggests that the wireless industry seeks to escape the taxes imposed upon wireline telecommunications operators and that it is attempting to escape generally applicable.<sup>6</sup> While state and local governments should not blindly impose the same taxes and fees that might have made sense in the era of wireline monopolies,<sup>7</sup> the

---

<sup>5</sup> Comments of the National League of Cities and its Member State Leagues at 19.

<sup>6</sup> Id.

<sup>7</sup> As PCIA explained in its White Paper, there are obvious differences between wireless and wireline businesses that justifies different tax treatment. Wireless carriers do not use public rights-of-way as extensively as wired carriers. Taxes and fees should reflect this diminished cost to the public. Wireless carriers are not granted monopoly franchises and should not be taxed on that basis. Intrastate wireless is regulated primarily at the federal level, not the state level. Wireless carriers have a far different cost structure since they have been forced to pay for spectrum, pay to move

record clearly demonstrates that the telecommunications industry in general and the wireless sector in particular are the special targets for revenue raisers.

PCIA's White Paper found that wireless carriers face a dizzying array of charges: state and local public utility commission fees, business occupational/license fees, universal service taxes and assessments, 911 fees, sales and use taxes, and municipal special district and school district taxes. In addition, wireless carriers face federal excise taxes and universal service charges. These targeted charges burden wireless intrastate revenues by an average of 12.1 percent in the 52 MSAs surveyed by PCIA-- with a high of 24.78% (Los Angeles) and a low of 3.76% (Boise). In eleven of these MSAs, the targeted charges exceeded 15 percent. **This tax and fee burden is in addition to state and local corporate income taxes, property taxes, recording and transfer fees, franchise taxes, lease taxes, incorporation registration/yearly fees and antenna/permit fees.**

The inordinate tax burden on the wireless and telecommunications sectors is confirmed elsewhere in this record.<sup>8</sup> Several commenters site to a recent study of the Telecommunications Tax Task Force of the Committee on State Taxation ("COST Report") that confirms that telecommunications providers face a far higher incidence and number of taxes than does the typical business.<sup>9</sup> According to the COST Report,

---

incumbents of this spectrum and pay to build out their networks—all in a competitive environment with no guaranteed rate of return.

<sup>8</sup> See Comments of Sprint Corporation at 13-15; United States Telecommunications Association; Triton PCS Holdings, Inc, at 3-9; BellSouth Corporation at 4-8; AirTouch Communications at 13-15; SBC Communications at 8-12; Cellular Telecommunications Industry Association; GTE Service Corporation at 11-19; AT&T Corporation at 30-45.

<sup>9</sup> See, e.g., CTIA Comments at Exhibit 1; GTE Comments at Appendix B.

telecommunications sales are subject to an average tax of 18 percent versus 6.31 percent for general businesses. Fees, taxes and assessments applicable to telecommunications may represent more than 20 percent of a carrier's annual intrastate revenues. A nationwide provider of telecommunications must deal with three times as many taxes as a general business; maintain almost four times as many tax bases; and file more than seven times as many transactional tax returns. Fourteen states tax the intangible value of telecommunications property but ignore the intangible values of general businesses while 14 states apply higher property taxes to the tangible property of telecommunications providers than to general businesses. The COST Report explains that telecommunications is one of the four most highly taxed industries in the U.S. along with tobacco, alcohol and gasoline.<sup>10</sup>

The COST Report recommends several options for tax simplification. PCIA enthusiastically supports these recommendations and believes they are worth of the Commission's attention. In particular, PCIA strongly supports the elimination of telecommunications-specific taxes imposed on services and inputs; eliminating the disparity between the taxation of telecommunications intangible property and other business intangible property; eliminating the tax on equipment used in telecommunications networks; establishing uniform rules for determining the source of revenues so that mobile revenues are not subject to taxes in multiple jurisdictions; streamlining the number of rate structures imposed on telecommunications transactions.<sup>11</sup>

---

<sup>10</sup> COST Report at 20-26.

<sup>11</sup> Id.

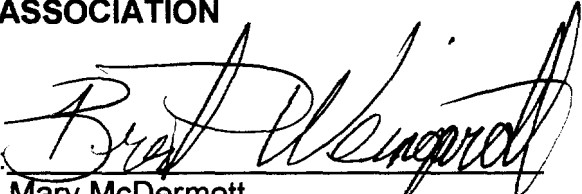
## II. CONCLUSION

The record in this proceeding clearly demonstrates that the telecommunications industry and the wireless sector have caught the attention of state and local taxing authorities and now experience taxes and fees well above those of main street businesses. Telecommunications operators face higher state and local tax rates; contend with a greater number of state and local taxes; sort through more taxes bases; file more returns and deal with a larger number of taxing jurisdiction.

The Commission should take the lead in focusing policy makers' attention on this industry's ability to improve consumer welfare, create new jobs and revitalize communities. More and larger taxes and fees threaten these objectives.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION**

By: 

Mary McDermott  
Chief of Staff and Senior Vice President,  
Government Relations

Brent H. Weingardt  
Vice President,  
Government Relations

**PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION**

500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561

(703) 739-0300

December 13, 1999

## CERTIFICATE OF SERVICE

I, Paulette Brown, hereby certify that on this 13<sup>th</sup> day of December, I caused copies of the foregoing "REPLY COMMENTS", to be served by U.S. mail, first class, and postage prepaid.

Laurence E. Harris  
David S. Turetsky  
Terri B. Natoli  
Teligent, Inc.  
Suite 400  
8065 Leesburg Pike  
Vienna, VA 22182

Philip L. Verveer  
Gunnar D. Halley  
Willkie, Farr & Gallagher  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20036

Counsel for SBC Communications Inc.  
Alfred G. Richter Jr.  
Roger K. Toppins  
Hope Thurrott  
One Bell Plaza, Room 3023  
Dallas, Texas 75202

Counsel for AT&T Corporation  
Howard J. Symons  
Michelle Mundt  
Ghita Harris-Newton  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, DC 20004

Counsel for the National League of Cities  
And its member state leagues  
Tillman L Lay  
Miller, Canfield, Paddock and Stone,  
1900 K. Street, N.W., Suite 1150  
Washington, DC 20006

Jonathan M. Chambers  
Vice President, Sprint PCS  
1801 K. Street, N.W., Suite M112  
Washington, DC 20006

Andre J. Lachance  
GTE Service Corporation  
1850 M. Street, N.W.  
Suite 1200  
Washington, DC 20036

Counsel for BellSouth Communications  
Dorian S. Denburg  
Suite 4300  
675 W. Peachtree Street  
Atlanta, GA 30375

Counsel for Triton PCS Holding, Inc.  
Caressa D. Bennet  
Edward D. Kania  
Bennet & Bennet, PLLC  
1000 Vermont Ave., 10<sup>th</sup> Floor  
Washington, DC 20005

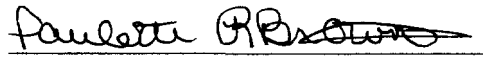


Counsel for  
AirTouch Communications, Inc.  
Pamela J. Riley  
David A. Gross  
1818 N. Street, N.W. Suite 800  
Washington, D.C. 20036

Gary Kuelto, Chairman  
United States Communications Association  
36<sup>th</sup> Floor  
30 S. Wacker Drive  
Chicago, Illinois 60600

Counsel for Cellular Telecommunications  
Industry Association  
Andre D. Williams  
Michael F. Altschul  
Randall S. Coleman  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036

International Transcription Services, Inc.  
445 Twelfth Street, S.W.  
Room CY-B402  
Washington, DC 20554

  
Paulette R. Brown